

ESA Improvement Act of 2013

BACKGROUND

While the Endangered Species Act allows the Fish & Wildlife Service (FWS) to consult with states during the listing process, current law often results in burdensome and ineffective federal management of species that can ignore or supersede collaborative conservation efforts in the states. Local, state, and regional officials are better equipped to coordinate species management efforts with stakeholders, and deference should be granted to these efforts when possible.

PURPOSE

The purpose of this legislation is to encourage greater state input and authority over species and habitat management. By requiring FWS to coordinate with states (if they choose) on a “State Protective Action” (SPA) and approve it if it meets established criteria, this bill would preclude the need for a listing in many circumstances. This would keep species management authority at the state and local level where stakeholders and species can be better protected simultaneously.

PROVISIONS

- Not later than 90 days prior to a proposed listing of a species, FWS shall notify affected state(s) of the option to submit a “State Protective Action” (SPA). In this notification, FWS shall issue criteria describing how the states might develop a SPA that would avert a listing.
- The affected state(s) may (but are not required to) submit a SPA at any time between the FWS notification and the closing of the public comment period for a proposed listing of the species. FWS shall offer guidance to the state(s) during the drafting of the SPA. The FWS final listing determination would treat an accepted SPA as a sufficient regulatory measure protecting the species, thus preventing a listing.
- Within 45 days of submission, FWS shall approve the SPA if the Secretary determines that it meets the established recovery criteria. FWS would be excused from other ESA statutory deadlines once a SPA is submitted.
 - If the SPA fails to meet the recovery criteria, FWS shall provide the state(s) with written comments explaining deficiencies and allow the state(s) 45 days to resubmit. Within 30 days of resubmission, FWS must issue a final determination on the SPA. A final listing determination shall not be made until FWS has come to a final decision on the proposed SPA.
 - If a SPA is approved, it shall be deemed an adequate existing regulatory mechanism to protect the species, therefore averting a listing of the species.
 - If no SPA is approved, the listing determination process shall proceed as normal. Even if a SPA is not approved, FWS may still come to a not warranted decision.
- State conservation efforts will qualify for all relevant ESA grants.
- If affected state(s) elect not to submit a SPA, listing procedures and ESA rules proceed as normal.
- Every 5 years after SPA approval, FWS shall examine the implementation and effectiveness of the SPA and provide, if necessary, guidance on improvements or revisions to maintain the SPA’s authority as a sufficient regulatory mechanism for recovery/species management.
 - After the guidance has been submitted, FWS may reinstitute listing procedures if the Secretary finds that the state(s) failed to implement the SPA guidance properly or the SPA failed to make measurable progress toward established recovery criteria.
 - At any time, the Secretary may determine that recovery criteria have been met and that periodic FWS examination is no longer warranted.